

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21657 of 2018
Date of Decision: 10.07.2020

Parminder Singh and anotherPetitioners

Versus

Punjab Urban Planning and Development Authority and another
.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Amarjit Singh, Advocate,
for the petitioners.

Mr. Aman Sharma, Advocate,
for the respondents.

KARAMJIT SINGH, J.

This writ petition in the nature of mandamus has been filed by the petitioners directing the respondents to allot them some other plot out of unallotted plots, in place of plots No.605 and 607, and in the alternate, the respondents be directed to refund the amount deposited by the petitioners against both the said plots along with interest at the rate of 12% per annum.

The case of the petitioners is that respondent No.2 invited applications for allotment of residential plots in Gateway City, Sector 118-119, S.A.S Nagar, on 03.12.2014 and the scheme was closed on 15.01.2015. The petitioners applied for allotment of plots in the said scheme. In the draw of lots, petitioners succeeded and they were allotted Plots No.605 and 607, vide allotment letters dated 21.09.2016 and 27.09.2016, respectively. The area of each plot was 256.66 Square yards and their cost was Rs.53,89,860/- each.

25% of the total cost was to be paid before the allotment and the remaining 75% was to be paid in six half yearly installments along with interest at the rate of 12% per annum. The petitioners have been regularly paying the installments. The petitioners visited both the said plots and came to know that they were situated at a distance of just 55 and 45 feet (approximately) from the boundary wall of Sewage Treatment Plant (S.T.P) and, thus, are not fit for human habitation. As per the policy of the State Government, the Sewage Treatment Plant should be located away from any potential population growth. The allotted plots could not be used for residential purpose as the foul smell emitted by S.T.P is continuous source of nuisance and is also health hazard. So, the petitioners were entitled to get some other plots out of the unallotted plots in place of Plots No.605 and 607. Otherwise, they were entitled to refund of the amount deposited by them along with interest at the rate of 12% per annum along with compensation for unnecessary litigation and delay.

On notice of motion, the writ petition was contested by the respondents.

We have heard learned counsel for the parties and also gone through the record of the case, carefully.

The plea of respondents is that the plots in question were allotted to the petitioners on “as is where is basis” and the petitioners were fully aware about the location of the said two plots, when they applied for the allotment of residential plots in Gateway City, Sector 118-119, S.A.S Nagar. It is also contended by the respondents that the S.T.P is not causing any nuisance. The S.T.P was constructed by using latest technology and involves odourless process. The S.T.P has got approval of Punjab Pollution Control Board. It is

further contended that buffer zone of 10 feet green belt of thick plantation with fragrance has been left adjacent to S.T.P. It is further argued that there is no nuisance or odour in the area due to presence of S.T.P. So, no alternative plots are required to be allotted to the petitioners in place of Plots No.605 and 607. In case, petitioners intend to refund of the amount deposited by them, then, the same will be subject to 10% deduction, as per the statutory provisions.

The plea of the petitioners is that Plots No.605 and 607 are non-feasible due to presence of S.T.P, which continuously emits foul smell in the atmosphere, which is harmful for the human health. Learned counsel for the petitioners contended that 10 feet wide buffer zone of fragrant plants will not be of any use. So, request is made that some alternative plots be allotted in place of Plots No.605 and 607 or otherwise, the amount deposited by the petitioners be refunded along with interest and damages.

We have considered the submissions made by the learned counsel for the parties.

It is not disputed that Plots No.605 and 607 were allotted to the petitioners. Even the fact regarding regular payment of installments has not been disputed by the respondents. It is also admitted fact that plots in question are situated at a distance of 55 and 45 feet (approximately) from the boundary wall of S.T.P.

As per the respondents, the S.T.P was constructed using latest Sequencing Batch Reactors (SBR) technology and the project was approved by the Punjab Pollution Control Board.

As per the approval given by the Punjab Pollution Control Board, it was a large scale industry. The fact that a buffer zone of green belt (dense

populated trees with pleasant fragrance), is to be provided around the S.T.P, clearly shows that the process of sewage treatment in the aforesaid S.T.P is not odourless. The foul smell emitted by the S.T.P is health hazard. The stench must be pervasive and cause of permanent nuisance in the area. A healthy environment is the need of the hour. The residential plots situated at a distance of about 45 to 55 feet from S.T.P may not be fit for human habitation due to continuous emission of foul smell and gases from it. The petitioners are not responsible for the said pollution. It is not possible for the petitioners to reduce the pollution/nuisance caused by the S.T.P. In these circumstances, the defence taken by the respondents that the allotment of disputed plots cannot be cancelled as the same were allotted to the petitioners on “as is where is basis” is not tenable.

It is not disputed that earlier the respondents declared another 23 allotted plots in the Gateway, Sector 118-119, S.A.S. Nagar, as non-feasible as is clear from Annexure P-11 (colly.). However, we are of the view that, at this stage, it is not possible for the respondents to allot some alternate plots to the petitioners in place of the plots in dispute. The respondents are ready to refund the amount already paid by the petitioners, after making 10% deduction, as per the provisions of Section 45 of the Punjab Regional and Town Planning and Development Act, 1995. The said statutory provision also provides that in genuine cases of hardship, the authority may by general or specific order, reduce the amount of forfeiture for the reasons to be recorded in writing.

In the present case, the circumstances are totally unusual. The plots allotted to the petitioners are not fit for residential purpose. Having regard to the peculiar facts and circumstances of the case, to meet the ends of

justice, we feel it appropriate to direct the respondents to refund the entire amount already deposited by the petitioners.

Accordingly, the direction is hereby given to the respondents to refund the entire amount already deposited by the petitioners, without any deduction and resultantly, the allotment of plots in question in the name of the petitioners would stand cancelled.

The writ petition stands disposed of, accordingly.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

10.07.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No